



**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
COLUMBIA DIVISION**

J. TODD KINCANNON,  
Plaintiff,

vs.

ERIC KIRKLAND, in his individual capacity;  
NICOLE HOWLAND, in her individual  
capacity; JOHN DOES #1-#10; THE STATE  
OF SOUTH CAROLINA; and LEXINGTON  
COUNTY,  
Defendants.

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CIVIL ACTION 3:18-945-MGL

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**ORDER ADOPTING THE REPORT AND RECOMMENDATION AND  
DISMISSING THIS ACTION WITHOUT PREJUDICE AND WITHOUT ISSUANCE  
AND SERVICE OF PROCESS FOR FAILURE TO PROSECUTE**

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Plaintiff J. Todd Kincannon filed this as a 42 U.S.C. § 1983 action. He is proceeding pro se. The matter is before the Court for review of the Report and Recommendation (Report) of the United States Magistrate Judge suggesting this action be dismissed without prejudice and without issuance and service of process under Rule 41(b) of the Federal Rules of Civil Procedure for failure to prosecute. The Report was made in accordance with 28 U.S.C. § 636 and Local Civil Rule 73.02 for the District of South Carolina.

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight. The responsibility to make a final determination remains with the Court. *Mathews v. Weber*, 423 U.S. 261, 270 (1976). The Court is charged with making a de novo determination of those portions of the Report to which specific objection is made, and the Court may

accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge or recommit the matter with instructions. 28 U.S.C. § 636(b)(1).

The Magistrate Judge filed the Report on June 5, 2018, but Kincannon failed to file any objections. “[I]n the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must ‘only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.’” *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005) (quoting Fed. R. Civ. P. 72 advisory committee’s note). Moreover, a failure to object waives appellate review. *Wright v. Collins*, 766 F.2d 841, 845-46 (4th Cir. 1985).

After a thorough review of the Report and the record in this case pursuant to the standard set forth above, the Court adopts the Report and incorporates it herein. Therefore, it is the judgment of the Court this action is **DISMISSED WITHOUT PREJUDICE** and without issuance and service of process under Rule 41(b) of the Federal Rules of Civil Procedure for failure to prosecute.

**IT IS SO ORDERED.**

Signed this 26th day of June, 2018, in Columbia, South Carolina.

s/ Mary Geiger Lewis  
MARY GEIGER LEWIS  
UNITED STATES DISTRICT JUDGE

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#### **NOTICE OF RIGHT TO APPEAL**

Kincannon is hereby notified of the right to appeal this Order within thirty days from the date hereof, pursuant to the Federal Rules of Appellate Procedure.